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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,751	10/27/2001	Vijay Vaidyanathan	1104-031	5799
27820 7590 09/25/2007 WITHROW & TERRANOVA, P.L.L.C. 100 REGENCY FOREST DRIVE SUITE 160 CARY, NC 27518			EXAMINER JABR, FADEY S	
			ART UNIT 3628	PAPER NUMBER
			MAIL DATE 09/25/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/032,751	<b>Applicant(s)</b> VAIDYANATHAN ET AL.	
	<b>Examiner</b> Fadey S. Jabr	<b>Art Unit</b> 3628	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Status of Claims*

Claims 1-40 remain pending and are again presented for examination.

### *Response to Arguments*

1. Applicant's arguments filed 1 August 2007 have been fully considered but they are not persuasive.
2. Applicant's arguments with respect to 35 U.S.C. 103(a) have been fully considered but they are not persuasive.
3. Applicant argues that the cited prior art fails to teach paying a content owner a payment based on a retail price minus a reseller commission paid to a party who downloaded the file from a digital marketplace and resold the file on a third party website. Examiner notes that the applicant has not claimed the above limitation. It appears that the applicant is suggesting that the prior art fails to teach **paying the first user the reseller commission set for the file; and paying the content owner a payment based on the retail price minus the reseller commission.** The applicant once again argues that the prior art fails to teach paying a first user a reseller commission for the sale of a file owned by a content owner and then paying the content owner a payment based on a retail price minus the reseller commission where the first user downloaded the file from a digital marketplace and resold the file on a third party website. The applicant has not claimed the preceding limitation. It appears the feature that the applicant is arguing is **if the second user downloads the particular file from the third party website, paying the first user the reseller commission set for the file.**

Examiner notes that Spagna discloses content providers licensing content to the **electronic digital content store** or intermediate market partners using in return for **content usage payments** related to the **electronic commerce revenues** (C. 12, lines 24-33). Thus, Spagna discloses a content owner providing digital content to an electronic store in return for payment. Further, Vestergaard teaches allowing a content owner to stipulate the amount of compensation a distributor (i.e. reseller) will receive for selling the content owner's products (0152). Therefore, Vestergaard teaches setting a reseller commission where the commission is a percentage of the revenue collected. Furthermore, Likourezos teaches paying an online store a reseller commission for putting up for sale the seller's product, where the owner receives the their selling price minus the reseller commission (0010). Thus, Likourezos teaches paying a content owner a retail price minus the reseller commission and where their product is sold on a third party website.

4. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the cited prior art are all concerned with selling content on an electronic marketplace.

5. The applicant is attempting to argue limitations that are not claims, for instance, the feature of setting a negative reseller commission where a reseller pays a content owner to deliver

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a file to a consumer for free. However, Examiner notes that Vestergaard teaches compensating the distributor a percentage of the gross revenues (0152). It is old and well known that percentages can be both positive and negative as the claim recites.

6. Applicant argues that the cited prior art fails to teach the step of including various sorting options. However, Examiner notes that Spagna discloses sorting options which allow a user to sort using various sorting options (C. 94, line 2). Moreover, Ferguson teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc. (C. 10, line 62 – C. 11, line 8). Thus, the cited prior art teaches including sorting options to match the files by particular file attributes.

7. Furthermore, the USPTO interprets claim limitations that contain statement(s) such as “*if, may, might, can, could, when, potentially, possibly*”, as optional language (this list of examples is not intended to be exhaustive). As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted (*In re Johnston*, 77 USPQ2d 1788 (Fed. Circ. 2006)). They will be given less patentable weight, because language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3-7, 10-12, 14-18 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna et al., U.S. Patent No. 6,587,837 B1 in view of Vestergaard et al., Pub. No. US2002/0146122 A1 and Likourezos et al., Pub. No. 2007/0005432 A1, hereinafter referred to as Spagna, Vestergaard and Likourezos, respectively.

As per Claims 1 and 12, Spagna discloses a method and system for delivering electronic content from an online store comprising:

- allowing a content owner to post a file on the marketplace for access by users by,
  - providing information about the file  
(C. 53, line 41- C. 55, line 62, C. 58, lines 2-9, also see Figure 6);
  - setting a retail price that users will be charged for downloading the file  
(C. 12, lines 52-56, C. 62, lines 48-49, C. 79, lines 60-64); and
- allowing a first user to search for files posted on the digital marketplace for one to resell on a third party website  
(C. 13, lines 13-37, C. 71, lines 22-44, C. 73, lines 46-60, C. 76, lines 34-38);
- allowing a second user to search for files posted on the digital marketplace for one to download (C. 75, lines 34-37);
- if the second user selects a particular file to download, charging the user the retail price set for the file (C. 62, lines 58-59).

Spagna fails to disclose *setting a reseller commission; if the second user downloads the particular file from the third party website, paying the first user the reseller commission set for the file; and paying the content owner a payment based on the retail price minus the reseller*

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*commission*. Spagna however does disclose content providers may exploit their rights directly or license content to the electronic digital content store or intermediate market partners usually in return for content usage payments related to electronic commerce revenues (C. 12, lines 24-33). Moreover, Vestergaard teaches allowing a content owner to stipulate the amount of compensation a distributor (i.e. reseller) will receive for selling the content owner's products. The compensation can be a percentage of the gross receipts or based on a flat rate (0152). Furthermore, Likourezos teaches a payment website management system pays the seller by direct deposit an amount equal to the charged amount minus a commission and a transaction fee. The commission typically paid to the operator or owner of the electronic auction website and the transaction fee is paid to the operator or owner of the payment website (0010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing a content owner to specify the amount of compensation that the distributor will receive if they sell their content and when the content is sold pay the content owner an amount equal to the charged amount minus the distributor's compensation and any ancillary fees as taught by Vestergaard and Likourezos, because it allows the content owner to determine the amount of revenue they are willing to receive for assistance in selling their product while also compensating the distributor for their assistance, as would be apparent in any typical business environment.

As per **Claims 3 and 14**, Spagna fails to disclose generating revenue for the digital marketplace by subtracting a transaction fee from the payment made to the content owner. However, Likourezos teaches a payment website management system pays the seller by direct

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deposit an amount equal to the charged amount minus a commission and a transaction fee. The commission typically paid to the operator or owner of the electronic auction website and the transaction fee is paid to the operator or owner of the payment website (0010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include subtracting any transaction fees owed by the seller to any third party before sending the final payment to the content owner as taught by Likourezos, because it allows the seller to efficiently and quickly receive compensation for their assistance in selling the content owner's item while decreasing the amount of transactions between all parties of interest.

As per Claims 4 and 15, Spagna fails to disclose allowing the content owner to set the retail price and the reseller commission both positively and negatively. However, Vestergaard discloses compensating the distributor a percentage of the gross revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing the content owner to modify the percentage of the gross revenue the distributor receives as taught by Vestergaard, because it provides the content owner the flexibility in adjusting the amount of revenue the content owner decides to retain for themselves.

As per Claims 5 and 16, Spagna discloses purchase price, pay-per-listen price, copy authorization and target device types, or timed-availability restrictions, subscription services (C. 13, lines 34-37, C. 15, lines 39-43). Spagna fails to disclose a publisher-sponsored



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download. However, Vestergaard teaches three pricing models in which the digital files can be distributed through: a free model, a Pay model and finally a Sponsored model (0058). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of well known business models for selling content as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

As per Claims 6 and 17, Spagna discloses the requesting the first user to enter display options for the search (C. 76, lines 34-38).

As per Claims 7 and 18, Spagna discloses searching for files (C. 76, lines 34-38). Spagna fails to disclose where the display options are free files, pay-per download files, or files listed as resalable. However, Spagna discloses a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Moreover, Vestergaard discloses a several different pricing options, one being a free file pricing model (0058). Vestergaard also discloses displaying to the user whether the digital file is free or not (0108). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of pricing options as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

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As per **Claims 10-11 and 21-22**, Spagna discloses implementing the marketplace as a website on a network (C. 13, lines 21-22). Spagna fails to disclose implementing the digital marketplace as a peer-to-peer network. However, Vestergaard teaches implementing the marketplace as a website o a peer-to-peer network (0042-0043). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and disclose implementing the marketplace as a website or a p2p network as taught by Vestergaard, because it allows the marketplace use the resources of the peers to distribute the content being sold.

10. Claims **2, 13, 23-27, 30-32 and 33-37** are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna in view of Vestergaard, Likourezos and Eaglen et al., Pub. No. US2003/0023505 A1.

As per **Claims 23-24 and 33-34**, Spagna discloses a method and system for delivering electronic content from an online store comprising:

- allowing a content owner to post a file on the marketplace for access by users by,
  - providing information about the file  
(C. 53, line 41- C. 55, line 62, C. 58, lines 2-9, also see Figure 6);
  - setting a retail price that users will be charged for downloading the file  
(C. 12, lines 52-56, C. 62, lines 48-49, C. 79, lines 60-64); and

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- allowing a first user to search for files posted on the digital marketplace for one to resell on a third party website  
(C. 13, lines 13-37, C. 71, lines 22-44, C. 73, lines 46-60, C. 76, lines 34-38);
- allowing a second user to search for files posted on the digital marketplace for one to download (C. 75, lines 34-37);
- if the second user selects a particular file to download, charging the user the retail price set for the file (C. 62, lines 58-59).

Spagna fails to disclose *setting a reseller commission; if the second user downloads the particular file from the third party website, paying the first user the reseller commission set for the file; and paying the content owner a payment based on the retail price minus the reseller commission*. Spagna however does disclose content providers may exploit their rights directly or license content to the electronic digital content store or intermediate market partners usually in return for content usage payments related to electronic commerce revenues (C. 12, lines 24-33). Moreover, Vestergaard teaches allowing a content owner to stipulate the amount of compensation a distributor (i.e. reseller) will receive for selling the content owner's products. The compensation can be a percentage of the gross receipts or based on a flat rate (0152). Furthermore, Likourezos teaches a payment website management system pays the seller by direct deposit an amount equal to the charged amount minus a commission and a transaction fee. The commission typically paid to the operator or owner of the electronic auction website and the transaction fee is paid to the operator or owner of the payment website (0010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing a content owner to specify the

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amount of compensation that the distributor will receive if they sell their content and when the content is sold pay the content owner an amount equal to the charged amount minus the distributor's compensation and any ancillary fees as taught by Vestergaard and Likourezos, because it allows the content owner to determine the amount of revenue they are willing to receive for assistance in selling their product while also compensating the distributor for their assistance, as would be apparent in any typical business environment.

Spagna fails to disclose that the content owner edits the file information and to change the retail price and the reseller commission in real-time. However, Eaglen teaches a dynamic pricing technique which changes the price of a product depending on its demand (0007-0009, 0064, 0083). Vestergaard also discloses compensating the distributor a percentage of the gross revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include changing the price of a product dynamically based on the demand for the product as taught by Eaglen et al, where the change in price also changes the distributor compensation. Eaglen provides motivation by stating the price is adjusted based on demand for the item so as to maximize profit (0083).

As per **Claims 2 and 13**, Spagna fails to disclose allowing the content owner to monitor download statistics for the file the content owner posted and to change the retail price and the reseller commission for the file in real-time. However, Eaglen teaches a dynamic pricing technique which changes the price of a product depending on its demand (0007-0009, 0064, 0083). Vestergaard also discloses compensating the distributor a percentage of the gross

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revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include changing the price of a product dynamically based on the demand for the product as taught by Eaglen et al, where the change in price also changes the distributor compensation. Eaglen provides motivation by stating the price is adjusted based on demand for the item so as to maximize profit (0083).

As per Claims 25, 30 and 35, Spagna discloses purchase price, pay-per-listen price, copy authorization and target device types, or timed-availability restrictions, subscription services (C. 13, lines 34-37, C. 15, lines 39-43). Spagna fails to disclose a donation and an infomercial download. However, Vestergaard teaches three pricing models in which the digital files can be distributed through: a free model, a Pay model and finally a Sponsored model (0058). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of well known business models for selling content as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

As per Claims 26 and 36, Spagna discloses the requesting the first user to enter display options for the search (C. 76, lines 34-38).

As per Claims 27 and 37, Spagna discloses searching for files (C. 76, lines 34-38).

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Spagna fails to disclose where the display options are free files, pay-per download files, or files listed as resalable. However, Spagna discloses a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Moreover, Vestergaard discloses a several different pricing options, one being a free file pricing model (0058). Vestergaard also discloses displaying to the user whether the digital file is free or not (0108). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of pricing options as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

As per Claims 31-32, Spagna discloses implementing the marketplace as a website on a network (C. 13, lines 21-22). Spagna fails to disclose implementing the digital marketplace as a peer-to-peer network. However, Vestergaard teaches implementing the marketplace as a website o a peer-to-peer network (0042-0043). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and disclose implementing the marketplace as a website or a p2p network as taught by Vestergaard, because it allows the marketplace use the resources of the peers to distribute the content being sold.

11. Claims **8-9 and 19-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna in view of Vestergaard and Likourezos as applied to claims 1 and 12 above, and further in view of Ferguson et al., U.S. Patent No. 5,819,092.

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As per Claims 8-9 and 19-20, Spagna fails to disclose requesting the first user to enter sorting options for the search, including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission. Spagna does disclose sorting options which allow a user to sort by artist, category, label, other (C. 94, line 2).

Moreover, Ferguson teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc., which later can be executed, viewed, printed, or filed (C. 10, line 62-C. 11, line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing a user to search and retrieve files according to certain file attributes as taught by Ferguson, because it allows for quick search through large collections of files (C. 10, lines 64-65).

12. Claims **28-29** and **38-40** are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna in view of Vestergaard, Likourezos and Eaglen as applied to claims 23 and 33 above, and further in view of Ferguson.

As per Claims 28-29 and 38-39, Spagna fails to disclose requesting the first user to enter sorting options for the search, including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission. Spagna does disclose sorting options which allow a user to sort by artist, category, label, other (C. 94, line 2).

Moreover, Ferguson teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc., which later can be executed, viewed, printed, or

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filed (C. 10, line 62-C. 11, line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include allowing a user to search and retrieve files according to certain file attributes as taught by Ferguson, because it allows for quick search through large collections of files (C. 10, lines 64-65).

As per **Claim 40**, Spagna discloses purchase price, pay-per-listen price, copy authorization and target device types, or timed-availability restrictions, subscription services (C. 13, lines 34-37, C. 15, lines 39-43). Spagna fails to disclose a donation and an infomercial download. However, Vestergaard teaches three pricing models in which the digital files can be distributed through: a free model, a Pay model and finally a Sponsored model (0058). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Spagna and include a variety of well known business models for selling content as taught by Vestergaard, because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**



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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadey S. Jabr whose telephone number is (571) 272-1516. The examiner can normally be reached on Mon. - Fri. 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Fadey S Jabr  
Examiner  
Art Unit 3628

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FSJ

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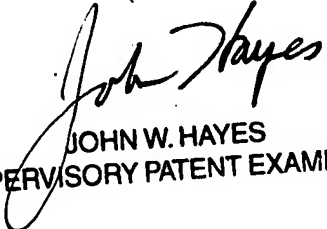
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JOHN W. HAYES  
SUPERVISORY PATENT EXAMINER